

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 16-14895-D

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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

versus

UNITED STATES POSTAL SERVICE,

Respondent.

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Application for Enforcement of an Order of the  
National Labor Relations Board

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Before: WILLIAM PRYOR, JORDAN, and ROSENBAUM, Circuit Judges.

BY THE COURT:

THIS CAUSE was submitted upon the application of the National Labor Relations Board (“the Board”) for the enforcement of a certain order on consent issued by it against Respondent, United States Postal Service (“USPS”), its officers, agents, successors, and assigns, on June 30, 2016, in Board Case Nos. 10-CA-165443, 10-CA-167900, 10-CA-167282, 10-CA-168277, 10-CA-168651, and 10-CA-170115; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the order of the Board is hereby ENFORCED, and that the USPS, its officers, agents, successors, and assigns, abide by

and perform the directions of the Board set forth in its order, a copy of which is attached to this order and hereby made the judgment of this Court.

The mandate shall issue forthwith.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**UNITED STATES POSTAL SERVICE**

**and**

**AMERICAN POSTAL WORKERS UNION,  
ATLANTA METRO AREA LOCAL 32**

**and**

**NATIONAL ASSOCIATION OF LETTER CARRIERS,  
BRANCH 73**

**Cases 10-CA-165443  
10-CA-167900  
10-CA-167282  
10-CA-168277  
10-CA-168651  
10-CA-170115**

**DECISION AND ORDER**

**Statement of the Cases**

On May 5, 2016, the United States Postal Service (the Respondent), American Postal Workers Union, Atlanta Metro Area Local 32 (APWU Local 32), National Association of Letter Carriers Branch 73 (NALC Branch 73) (collectively, "the Unions"), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to Board approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.<sup>1</sup>

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<sup>1</sup> We note that the remedy to which the parties have agreed differs in some respects from previous broad orders that the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *United States Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007); *United States Postal Service*, 28-CA-017383 et al., unpublished order issued November 4, 2002, enfd. Case 02-9587 (10th Cir. 2003). These broad orders, as enforced by the United States Court of Appeals,



Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

### **Findings of Fact**

#### **1. The Respondent's business**

The Respondent is and has been, at all times material herein, an independent establishment of the Executive Branch of the Government of the United States providing postal services. It operates various facilities throughout the United States, including those facilities set forth in Appendix B. The Respondent is now, and has been at all material times, an entity subject to the Board's jurisdiction by virtue of Section 1209 of the Postal Reorganization Act (the PRA), 39 U.S.C. § 101 et. seq.

#### **2. The labor organizations involved**

At all material times, American Postal Workers Union (APWU) has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, APWU Local 32 has been an agent of APWU, acting on behalf of APWU, within the meaning of Section 2(13) of the Act.

At all material times, by virtue of Section 9(a) of the Act, APWU has been, and is now, the exclusive bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of employees in an appropriate unit as set forth in Article 1 of the current National Agreement between the Respondent and APWU, including employees employed by the Respondent at its facilities set forth in Appendix B.

At all material times, National Association of Letter Carriers (NALC) has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times NALC Branch 73 has been an agent of NALC, acting on behalf of NALC, within the meaning of Section 2(13) of the Act.

At all material times, by virtue of Section 9(a) of the Act, NALC has been, and is now, the exclusive bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of employees in an appropriate unit as set forth in Article 1 of the current National Agreement between the Respondent and NALC, including employees employed by the Respondent at its facilities set forth in Appendix B.

### **ORDER**

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remain in effect, and the Board's approval of this stipulation does not modify these orders in any respect.



Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, United States Postal Service, at various locations in Georgia as set forth in Appendix B, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with NALC Branch 73 and APWU Local 32, and/or any other labor organizations (collectively referred to as "the Unions") representing bargaining unit employees at any of the Respondent's facilities set forth in Appendix B, by refusing or unduly delaying furnishing information that is relevant and necessary to the performance of the Unions' duties as the exclusive bargaining representatives of employees at the facilities described above.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

(b) Waive, for 30 days following issuance of the Board's Order, any contractual deadlines for filing and pursuing grievances related to the requested information, where the Unions missed contractual deadlines due to the Respondent's delay or refusal in providing the requested information.

(c) For each of the Respondent's facilities set forth in Appendix B, the Respondent will maintain a log in which it will immediately record each information request tendered by the Unions, orally or in writing, for each facility. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the name of the supervisor or manager who received the request; the date the request was made; and the date that the Respondent's manager or supervisor provided the Unions with the requested information, or upon which the Respondent's manager or supervisor responded to the Union with an explanation for any anticipated delay. If the manager or supervisor, having reviewed the documents requested, believes that the Respondent will need additional time, the manager or supervisor will inform the Unions in writing, requesting additional time and explaining the need for the additional time. Such responses shall be recorded in the information request logs.

(d) Each manager, supervisor, and agent who is designated to receive union requests for information for any of the Respondent's facilities set forth in Appendix B will receive within thirty (30) days of the entry of the Board's Order, and annually thereafter, training which encompasses how to maintain the log, and how to tender the



relevant information requested by the Unions; each such supervisor and manager will sign an acknowledgement form attesting to the fact that he or she has completed said training. A copy of this acknowledgement form shall be maintained in the supervisor's or manager's training and history files. Union stewards will be granted access to the logs, upon request. Supervisors, managers, or agents who fail to reasonably supply relevant information to the Unions will have this fact mentioned in the "corrective action" column of the quarterly audit report described below in paragraph 2(f). Repeated violations could lead to discipline of said supervisor or manager.

(e) Union stewards at the Respondent's facilities described in Appendix B must be notified when the manager, supervisor, or agent who is designated to receive requests for information for their particular facility has changed.

(f) The Respondent's legal department or its labor relations department shall conduct quarterly audits of the logs at each of the Respondent's facilities set forth in Appendix B to ensure that the information requested by the Unions is being handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Within ten days following each quarterly audit, the legal department or labor relations department shall tender, in writing, a written report setting forth for each request that did not receive a complete response within seven days: the identity of the requesting party; a summary of the request; the location for which the request was made; the name of the supervisor or manager responsible for responding to the request; the number of days from request to initial response; the number of days from request to complete and/or final response; and any action taken to address and/or correct unreasonable failures and delays by supervisors and managers. This audit report will be forwarded to the USPS district manager, the USPS district manager of human resources, USPS labor relations, the USPS Law Department NLRB Unit, and the Compliance Officer for NLRB Region 10. To the extent that such audits indicate that requests are not being responded to in a timely and appropriate manner or that the logs recording information requests are not being properly maintained, remedial training shall be provided to all persons in a supervisory or managerial capacity who were or are involved in the process of providing information to the Unions for the applicable facility. The Respondent will provide documentation of any such training to the NLRB Region 10 Compliance Officer upon completion of the remedial training.

(g) Within 14 days of service by the Region:

(i) Post at all of its facilities set forth in Appendix B, copies of the Notice to Employees attached as Appendix A.<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted.

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<sup>2</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."



(ii) Electronically post the Notice to Employees for employees at all its facilities set forth in Appendix B if the Respondent customarily uses electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with these employees;

(iii) Within ten (10) days after entry of the Board's Order:

(A) Provide a copy of the Board Order and Notice to Employees to all of its supervisors and managers, including acting supervisors and managers, at all of its facilities described in Appendix B.

(B) Provide with written instructions all supervisors and managers, including acting supervisors and managers, to comply with the provisions of the Order. The instructions shall underscore that:

- 1) Unprivileged or unwarranted refusals and unreasonable delays in responding to requests for information required under the Act to be provided to labor organizations shall not be tolerated by the Respondent.
- 2) Any unwarranted failure to provide, or unreasonable delay in providing, such information will subject the responsible supervisor(s) and/or manager(s) to discipline by the Respondent as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations.
- 3) The Respondent shall also provide all future supervisory or management officials, including temporary supervisors acting in that capacity for at least ten (10) consecutive calendar days, in the postal facilities referenced above with a copy of said Order and written instructions promptly upon their assuming those positions.
- 4) Each person receiving the Board Order and instructions described above shall acknowledge in writing that he or she has been furnished with a copy thereof, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone any violation of this Order; and the Respondent shall retain and supply copies of those acknowledgments and the written instructions to NLRB Region 10 pursuant to subparagraph (i) below.

(iv) Upon receipt of the Notice to Employees, each manager will record the date said notice was received, the date on which the notices were posted at the facility, and each location of the posting. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(v) In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility at any time since April 1, 2015.

(h) Within 14 days from the date of this Order, at each of the Respondent's facilities set forth in Appendix B, convene meetings during work time, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to all employees, supervisors, and managers. The Respondent will advise the Regional Director of the dates and times of such notice readings, and the Union and the Region shall be afforded a reasonable opportunity to provide for the attendance of a union official and/or a Board agent at any assembly of employees called for the purpose of reading such notice. The Respondent shall maintain sign-in sheets for supervisors and managers at the readings at each location and submit copies of the sign-in sheets to the Region within seven days of the final notice reading.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply. The certification shall include: (i) a copy of the documents signed by the district manager of labor relations, attesting to the dates that the notices received at each facility and the dates that the notices were posted; (ii) a certification by the installation head attesting to the dates that the notice was read at each facility; (iii) copies of the acknowledgements, signed by each of the Respondent's supervisors and managers at each of the Respondent's facilities set forth in Appendix B, that they may be subject to disciplinary action as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations; and (iv) copies of notice-reading meeting sign-in sheets for supervisors and managers.

Dated, Washington, D.C., June 30, 2016

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Philip A. Miscimarra, Member

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Kent Y. Hirozawa, Member

\_\_\_\_\_  
Lauren McFerran, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**



**APPENDIX A**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER  
AND A CONSENT JUDGMENT OF ANY APPROPRIATE  
UNITED STATES COURT OF APPEALS**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** refuse to bargain collectively and in good faith by refusing or unduly delaying furnishing information requested by American Postal Workers Union, Local 32, National Association of Letter Carriers Branch 73, and/or any other labor organization representing bargaining unit employees (the Unions), that is relevant and necessary to the performance of their duties as the exclusive bargaining representatives of the bargaining unit employees.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by the National Labor Relations Act.

**WE WILL**, upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

**WE WILL** waive for 30 days following issuance of the Board's Order any contractual deadlines for filing and pursuing grievances related to the requested information, where the Unions missed contractual deadlines due to our delay or refusal in providing requested information.

**WE WILL**, for certain facilities agreed upon by the parties, maintain a log in which we will immediately record each information request, made orally or in writing, by the Unions at that facility. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the name of the supervisor or agent who received the request; the date the request was made; and the date the Employer's manager, supervisor or agent provided the Unions with the requested information. If the manager, supervisor or agent, having reviewed the documents requested, believes that we need additional time, we will immediately request such additional time from the Unions while simultaneously explaining the need for additional time.

**WE WILL** within 30 days and annually thereafter provide training to each manager, supervisor or agent who is designated to receive or process requests for information for each of the facilities described above which encompasses how to maintain the log, and how to tender the relevant information requested by the Unions; each such supervisor and manager will sign an acknowledgment form attesting to the fact that he or she has completed said training. A copy of this acknowledgment form shall be maintained in the supervisor's or manager's training and history files. Union stewards will be granted access to the logs, upon request. Supervisors, managers or agents who fail to reasonably supply relevant information to the Unions will have this fact mentioned in the "corrective action" column of the quarterly audit report provided to the district manager and district manager of human resources. Repeated violations could lead to discipline of said supervisor or manager.

**WE WILL** notify Union stewards at the facilities described above when the manager or supervisor who is designated to receive union requests for information for their particular facility has changed.

**WE WILL**, through our legal department or labor relations department, conduct quarterly audits of the logs at the facilities described above to ensure that the information requested by the Unions is being handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Following the audit, our legal department or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager, the district manager of human resources, USPS labor relations, USPS Law Department-NLRB unit, and the NLRB Compliance Officer.

#### UNITED STATES POSTAL SERVICE

The Board's decision can be found at [www.nlr.gov/case/10-CA-165443](http://www.nlr.gov/case/10-CA-165443) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.





## **Appendix B**

The Employer's facilities located at the following addresses:

5330 Brookstone Drive NW #250, Acworth, GA

4200 McEver Industrial Drive NW, Acworth, GA

5944 Highway 92, Acworth, GA

3900 Crown Road, Atlanta, GA

1800 James Jackson Parkway, Atlanta, GA

525 Tribble Gap Road, Cumming, GA

5465 Highway 42, Ellenwood, GA

250 Georgia Avenue East, Fayetteville, GA

4989 Courtney Drive, Forest Park, GA

405 Lagrange Highway, Greenville, GA

100 Eagles Landing, Jasper, GA

3035 Stone Mountain Drive, Lithonia, GA

60 Postal Parkway, Newnan, GA

6691 Church Street, Riverdale, GA

8060 Webb Road, Riverdale, GA

1420 Martha Berry Blvd NE, Rome, GA

374 Henry Bryant Road, Sargent, GA

5050 Union Street, Union City, GA

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

August 23, 2016

Linda Dreeben  
National Labor Relations Board  
Appellate Litigation  
1015 HALF ST SE  
WASHINGTON, DC 20570

**\*\*CORRECTED LETTER: NLRB Order Attached\*\***

Appeal Number: 16-14895-D  
Case Style: National Labor Relations Board v. United States Postal Service  
Agency Docket Number: 10-CA-165443

The stipulation for entry of a consent judgment has this day been entered in the referenced case.  
A copy of the consent judgment is enclosed. The proceeding is terminated in this Court.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Scott O'Neal, D  
Phone #: (404) 335-6189

Enclosure(s)

DIS-4 Multi-purpose dismissal letter